



PATENT
Customer No. 22,852
Attorney Docket No. 05725.0975-00

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

Daniela GIACCHETTI et al.

Application No.: 10/024,622

Filed: December 21, 2001

For: HISTORICAL BEAUTY RECORD

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P.O. Box 1450

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Sir:

APPEAL BRIEF UNDER BOARD RULE § 41.37

This is an appeal to the Board of Patent Appeals and Interferences ("the Board") from the Final Office Action dated October 4, 2006 ("Final Office Action"), rejecting claims 1-25 and 27-61, in the above-referenced patent application. Pursuant to 37 C.F.R. § 41.37, Appellants submit this Appeal Brief and enclose herewith the required fee of \$500.00 under 37 C.F.R. § 41.20(b)(2).

A Notice of Appeal was filed on December 20, 2006. This Appeal Brief is being filed concurrently with a petition for one-month extension of time. If any additional fees are required or if the enclosed payment is insufficient, Appellants request that the required fees be charged to Deposit Account No. 06-0916.

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I. **Real Party In Interest**

The real party in interest is L'Oréal S.A., the assignee of the entire right, title, and interest in the application, as indicated by assignment duly recorded in the U.S. Patent and Trademark Office, beginning at Real 012939, Frame 0415, on May 30, 2002.

II. Related Appeals and Interferences

Appellants, Appellants' legal representative, and Assignee are not aware of any other appeals, interferences, or judicial proceedings that may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

III. Status Of Claims

Claims 1-25 and 27-61 are pending in this application. Claim 26 was previously canceled. Claims 1-25 and 27-61, as set forth in the Claims Appendix, were rejected in the Final Office Action and the rejections applied to those claims are at issue in this appeal.

IV. Status Of Amendments

No amendments have been filed subsequent or in response to the Final Office Action.

V. Summary Of Claimed Subject Matter

A. Independent claim 1

Claim 1 recites a method. The method comprises obtaining first information representative of an external body condition of a subject. Fig. 2A; page 7, lines 7-22¹. The method also comprises obtaining second information representative of the external body condition of the subject after the subject uses a beauty product. Fig. 2A; page 8, lines 1-8. The method further comprises facilitating storage of information reflecting the subject's usage of the beauty product. Fig. 2A; page 8, lines 16-22. The method further comprises enabling the subject to view the first information, the second information, and at least part of the stored information. Fig. 2A; page 9, lines 8-13.

B. Independent claim 5

Claim 5 recites a method. The method comprises providing information about beauty products. Fig. 2B; page 9, lines 14-22. The method also comprises facilitating electronic capture of a first image of an external body condition of a subject. Figs. 2B, 7, 8; page 10, lines 12-19. The method further comprises encouraging the subject to use at least one of the beauty products. Page 14, lines 1-17. The method further comprises facilitating, after the subject has used the at least one beauty product, electronic capture of a second image of the external body condition of the subject. Fig. 2B; page 15, lines 10-19. Capture of at least one of the first and second images occurs at a beauty facility. Page 10, lines 14-19; page 19, line 22 - page 20, line 2. The

¹ In referring to the specification and drawings, Appellants do not intend to limit the scope of the claims to the exemplary embodiments described in the specification and shown in the drawings. Rather, Appellants expressly affirm their entitlement to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law. These designations and references are exemplary and non-exhaustive, and they should not be construed as limiting the claims.

method further includes facilitating capture and storage of information reflecting usage of at least one of the beauty products by the subject. Fig. 2B; page 14, line 22 - page 15, line 1; page 15, lines 6-9; page 16, lines 14-15. The usage occurs on at least one occasion between capture of the first image and capture of the second image. Page 16, lines 14-15 The method further includes enabling the subject to view the first image, the second image, and the stored information on a display device, to thereby visually observe changes that occurred between times when the first and second images were captured. Figs. 1, 2B; page 15, line 22 - page 17, line 1-6.

C. Independent claim 31

Claim 31 recites a method of recording beauty information. The method comprises capturing, through a beauty facility, at least a first image of an external condition of a subject. Figs. 2B; page 10, lines 12-19. The method also comprises establishing a subject record, the record including the first image. Page 11, line 3 - page 12, line 18. The method further comprises prescribing a cosmetic product to the subject for treating the external condition. Page 14, lines 1-6. The method further comprises capturing, through the beauty facility, at least a second image of the external condition of the subject. Page 15, lines 10-19. The second image is being captured after the first image is captured. Page 8, lines 3-4. The method further comprises associating the at least one second image with the subject record. Page 15, line 20 - page 18, line 2. The method further comprises providing the subject with viewing access to the subject record. Page 11, line 11 - page 13, line 7.

D. Independent claim 32

Claim 32 recites a method. The method comprises providing a beauty facility with technology for capturing external body condition images of a customer. Page 10, line 20 - page 11, line 2. The method also comprises distributing at least one cosmetic product to the beauty facility. Fig. 2B; page 9, lines 14-22. The method further comprises instructing the beauty facility to capture images of the external body condition before and after application of the at least one cosmetic product. Page 10, line 12 - page 11, line 2; page 15, lines 10-19. The method further comprises instructing the beauty facility to display to the customer the before and after images so that the customer may be provided with a visual indication of progress. Page 11, line 17 - page 12, line 18; page 15, line 22 - page 16, line 8; page 16, line 20 - page 17, line 6.

E. Independent claim 39

Claim 39 recites a method. The method comprises enabling a subject to record personal beauty information on a transportable medium. Page 11, line 17 - page 12, line 3. The method also comprises enabling a plurality of beauty facilities to read the information on the transportable medium, and to update the information when the subject visits one or more of the plurality of beauty facilities. Page 12, lines 4-18. The method further comprises enabling the personal information to be updated by the subject at a location remote from a beauty facility. Page 12, line 19 - page 13, line 7.

F. Independent claim 44

Claim 44 recites a method. The method comprises enabling a beauty facility to record on transportable medium personal beauty information about a subject. Page 11, line 17 - page 12, line 3. The method also comprises enabling the subject to access, at a location remote from the beauty facility, the personal beauty information. Page 12, lines 4-18. The method further comprises enabling the subject to update, at a location remote from the beauty facility, the personal beauty information. Page 12, line 19 - page 13, line 7. The method further comprises enabling the subject to compare, at a location remote from the beauty facility, the accessed personal beauty information and the updated personal beauty information. Page 12, line 4 - page 13, line 7.

G. Independent claim 45

Claim 45 recites a method. The method comprises enabling an individual to record in a data structure information about the individual's cosmetic product usage. Figs. 7, 8; page 11, lines 3-4; page 23, lines 3-9; page 24, lines 12-16. The method also comprises enabling the individual to record in the data structure personal information, other than the cosmetic product usage information. Figs. 7, 8; page 14, line 18 - page 15, line 9; page 23, lines 3-9; page 24, lines 12-16. The personal information includes at least one of lifestyle information, information about physical characteristics of the individual, fashion preferences, area of residence, vacation patterns, and climate and weather conditions at areas of vacation and residence. Page 11, lines 7-10. The method further comprises enabling an individual to update in

the data structure cosmetic product usage information and personal information. Page 11, lines 3-5; page 23, lines 3-9; page 24, lines 12-16. The method further comprises enabling the data structure to maintain a historical record of at least some of the recorded cosmetic product usage information and personal information. Page 11, line 17-20. The method further comprises causing at least one product to be recommended to the individual, wherein the at least one product recommendation is generated using at least a portion of the historical record. Page 14, line 1 - page 15, line 9.

H. Independent claim 46

Claim 46 recites a beauty advisory method. The method comprises enabling a subject to record in a data structure information about the subject's cosmetic product usage and about the subject's lifestyle. Fig. 7, 8; page 11, lines 3-4; page 23, lines 3-9; page 24, lines 12-16. The method also comprises comparing the recorded information with a database of information on cosmetic usage and lifestyles of a plurality of individuals. Page 14, line 18 - page 15, line 9. The method further comprises determining whether the subject's cosmetic usage is consistent with the cosmetic usage and lifestyles of a trend of use by at least some of the plurality of individuals. Page 14, line 18 - page 15, line 9. The method further comprises causing, when the subject's cosmetic usage is inconsistent with the cosmetic usage of individual's with lifestyles similar to the subject's lifestyle, at least one product to be recommended to the subject. Page 14, line 18 - page 15, line 9.

I. Independent claim 48

Claim 48 recites a method. The method comprises offering for sale beauty products. Fig. 2B; page 9, lines 14-22. The method also comprises facilitating electronic capture of a first image of an external body condition of a subject. Fig. 2B; page 10, line 12-19. The method further comprises encouraging the subject to use at least one of the beauty products. Page 14, lines 1-17. The method further comprises facilitating, after the subject has used the at least one cosmetic product, electronic capture of a second image of the external body condition of the subject. Fig. 2B; page 15, line 10-19. Capture of at least one of the first and second images occurs at a beauty facility. Page 10, lines 12-19; page 19, line 21 - page 20, line 2. The method further comprises facilitating capture and storage of information reflecting usage of at least one of the cosmetic products by the subject. Fig. 2B; page 15, lines 10-19. The usage occurs on at least one occasion between capture of the first image and capture of the second image. Page 15, lines 10-19. The method further comprises enabling the subject to view the first image, the second image, and the stored information on a display device, to thereby visually observe changes that occurred between times when the first and second images were captured. Figs. 1, 2B; page 15, line 20 - page 18, line 2.

J. Independent claim 49

Claim 49 recites a method. The method comprises providing information about beauty products. Fig. 2B; page 9, lines 14-22. The method also comprises providing instructions for storage of first information relating to an external body condition of a

subject in a first time frame. Fig. 2A; page 7, lines 6-22. The method further comprises providing instructions for storage of second information relating to an external body condition of a subject in a second time frame. Fig. 2A; page 8, lines 1-15. The method further comprises analyzing the first and second information to determine an extent of differences that occurred in the body condition between the first and second time frames. Page 15, line 20 - page 17, line 7. The method further comprises prescribing at least one beauty product based on the extent of determined differences. Page 13, line 19 - page 15, line 9.

K. Independent claim 50

Claim 50 recites a method of recording beauty information. The method comprises providing information about beauty care. Fig. 2B; page 9; lines 14-22. The method also comprises providing instructions for storage of first information relating to an external body condition of a subject in a first time frame. Fig. 2A; page 7, lines 6-22. The method further comprises providing instructions for storage of second information relating to an external body condition of a subject in a second time frame. Fig. 2A; page 8, lines 1-15. The method further comprises providing instructions for storage of third information relating to behavior of a subject between the first and second time frames. Page 8, lines 16-22; page 9, lines 5-7. The method further comprises establishing a subject record, the record including the first, second and third information. Page 9, lines 8-13; page 11, line 3 - page 12, line 18. The subject is enabled to maintain control of the subject record. Fig. 9; page 9, lines 8-13; page 13, lines 11-18; page 23, line 17 - page 24, line 6.

VI. Grounds of Rejection to be Reviewed on Appeal

The following grounds of rejection are to be reviewed:

- A. Claims 31 and 49 stand rejected under 35 U.S.C. § 112.
- B. Claims 1-25 and 27-61 stand rejected under 35 U.S.C. § 112, ¶ 2 as allegedly indefinite.
- C. Claims 1-25 and 27-61 stand rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter.
- D. Claims 31-38, 49, 57, 60, and 61 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2002/0054714 ("Hawkins").
- E. Claims 1-24, 27-30, 48, and 50-56 stand rejected under 35 U.S.C. § 103(a) based on Hawkins in view of International Publication No. WO 01/87245 ("Marapane").
- F. Claims 45-47 stand rejected under 35 U.S.C. § 103(a) based on International Publication No. WO 01/18674 A2 ("Maloney") in view of Marapane.
- G. Claim 25 stands rejected under 35 U.S.C. § 103(a) based on Hawkins in view of Marapane and further in view of AS/400 Redbook Softcopy Library CD Image ("Redbook Image").
- H. Claims 39-44, 58, and 59 stand rejected under 35 U.S.C. § 103(a) based on Maloney.

VII. Argument

**A. The Rejection of Claims 31 and 49 Under 35 U.S.C. § 112
Should Be Reversed**

In the Final Office Action at page 2, claims 31 and 49 are rejected under 35 U.S.C. § 112. However, the Examiner has no explanation for the basis of the § 112 rejection of claims 31 and 49. Thus, the § 112 rejection of claims 31 and 49 is improper and should be reversed.

**B. The Rejection of Claims 1-25 and 27-61 Under 35 U.S.C. § 112,
¶ 2 Should Be Reversed**

In the Final Office Action at pages 2 and 3, the Examiner alleges that claims 1, 5, 31, 32, 39, 44-46, and 48-50 are indefinite for using the terms "facilitating," "enabling," "encouraging," "prescribing," "associating," "instructing," and "causing." First, Appellants note that claim 50 does not use any of those terms. Claim 50 merely recites "providing information . . . , " "providing instructions . . . , " and "establishing a subject record" Accordingly, the Examiner's allegations regarding claim 50 are incorrect, and the Examiner has not presented a *prima facie* case of alleged indefiniteness with respect to claim 50.

Second, Appellants submit that one skilled in the art would understand the meaning of the terms recited in claims 1, 5, 31, 32, 39, 44-46, and 48-50, upon reading those claims. Further, as previously mentioned, definiteness of claim language must be analyzed, not in a vacuum, but in light of the content of the application disclosure. M.P.E.P. § 2173.02. In view of the specification, one skilled the art would understand the meaning of claims 1, 5, 31, 32, 39, 44-46, and 48-50. For instance, paragraph [30] on page 8 of the specification, paragraph [33] on page 9 of the specification,

paragraphs [36] and [37] on pages 10-11 of the specification, paragraph [48] on page 14 of the specification, paragraph [49] on pages 14-15 of the specification, and paragraphs [089] to [093] on pages 32-35 of the specification include disclosure relevant to understanding the meaning of one or more of the terms "facilitating," "enabling," "encouraging," "prescribing," "associating," "instructing," and "causing."

Further, Appellants disagree with the Examiner's stated reasons for objecting to the claim term "enabling display." See the Final Office Action at page 3. Contrary to the Examiner's apparent assertion, the issue of whether or not "enabling display" requires anything to be displayed concerns the breadth of the claim recitation, not its definiteness. Breadth of a claim cannot be equated with indefiniteness. M.P.E.P. § 2173.04. Furthermore, the Examiner has not articulated any reasonable basis to explain why he fails to understand the meaning of "enabling" even though the meaning of that term is clear in light of the specification.

For at least these reasons, the § 112, ¶ 2 rejection of claims 1-25 and 27-61 should be reversed.

C. The Rejection of Claims 1-25 and 27-61 Under 35 U.S.C. § 101 Should Be Reversed

In the Final Office Action at pages 3-5, the Examiner alleges that the inventions in claims 1-25 and 27-61 are non-statutory because they allegedly do not provide (1) useful and (2) tangible results. Regarding the first issue, Appellants point out that the inventions in claims 1-25 and 27-61 provide useful results. For example, claim 1 recites "obtaining first information representative of an external body condition of a subject; obtaining second information representative of the external body condition of

the subject after the subject uses a beauty product; facilitating storage of information reflecting the subject's usage of the beauty product; and enabling the subject to view the first information, the second information, and at least part of the stored information."

Hence, the invention in claim 1 enables a subject to view first information, second information, and at least part of stored information reflecting the subject's usage of a beauty product. This is a useful result in and of itself because it enables the subject to view information on the subject's usage of the beauty product. Additionally, as disclosed in the specification at paragraphs [002] to [005], another useful result is that it allows a subject to track the progress and evaluate the effectiveness of the beauty product. As stated by the Examiner on page 4 of the Final Office Action, "utility need not be expressly recited in the claims, rather it may be inferred." In this instance, both claim 1 and the specification expressly disclose useful applications.

Regarding the second issue, Appellants point out that the inventions in claims 1-25 and 27-61 provide tangible results. For example, as discussed above, the invention in claim 1 enables a subject to view first information, second information, and at least part of stored information reflecting the subject's usage of a beauty product. Further, as disclosed in the specification, the invention in claim 1 can also allow a subject to track the progress and evaluate the effectiveness of the beauty product. These are clearly tangible results and the Examiner has not provided any evidence to the contrary. Indeed, in the Final Office Action at page 4, the Examiner quotes *In re Warmerdam* for a test of evaluating whether an invention provides tangible results. According to the Examiner, the test is allegedly whether there is a mathematical

construct claimed. Even by this standard, Appellants note that claim 1 does not claim a mathematical construct, and hence, claim 1 provides tangible results.

Additionally, in the Final Office Action at pages 4 and 5, the Examiner states that "facilitating," "enabling," "encouraging," "prescribing," "associating," "instructing," and "causing" are allegedly vague and indefinite, and therefore claims containing those terms allegedly do not provide useful and/or tangible results. Appellants submit that those terms are not vague or indefinite as previously discussed above in response to the rejection under 35 U.S.C. § 112, ¶ 2. Accordingly, the claims including those terms provide useful and tangible results.

For at least the above reasons, claim 1 is directed to statutory subject matter. Further, remaining claims 2-25 and 27-61 are also directed to statutory subject matter for reasons similar to the ones discussed above for claim 1. That is, claims 2-25 and 27-61 and/or the specification disclose useful and tangible results that are provided by the inventions in those claims.

For at least these reasons, the § 101 rejection of claims 1-25 and 27-61 should be reversed.

D. The Rejection of Claims 31-38, 49, 57, 60, and 61 Under 35 U.S.C. § 102(e) Based on Hawkins Should Be Reversed

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). A rejection under § 102 is proper only when the claimed subject matter is identically described or disclosed in the prior art. *In re Arkley*, 455 F.2d 586,

587, 172 USPQ 524, 526 (CCPA 1972). Further, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Finally, “[t]he elements must be arranged as required by the claim.” M.P.E.P § 2131; see *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Hawkins discloses applying a cosmetic product to a body, capturing an image of a consumer, displaying the image on a monitor, and digitally transforming the image to reflect the effect of using the selected cosmetic product over a period of time. Hawkins, Abstract. Glow, color, sags, wrinkles, and pores are among the attributes that are transformed in the image. *Id.* The original and transformed images are juxtaposed on a screen, and the consumer selects between the images until the consumer has chosen her most appealing transformation. *Id.*

In this case, the rejection of claims 31-38, 49, 57, 60, and 61 under 35 U.S.C. § 102(e) should be reversed because the Final Office Action fails to establish that Hawkins teaches each and every element of Appellant’s claimed invention.

1. *Hawkins fails to disclose each and every element recited in claim 31*

Hawkins fails to teach at least “establishing a subject record, the record including the first image,” “associating the at least one second image with the subject record,” and “providing the subject with viewing access to the subject record,” as recited in claim 31. Hawkins does not mention these “establishing . . . ,” “associating . . . ,” and “providing . . . ” features of claim 31.

In the Final Office Action at page 6, the Examiner asserts that capturing an image of a body feature discloses the "establishing a subject record . . ." in addition to "capturing, through a beauty facility, at least a first image of an external condition of a subject," as recited in claim 31. Appellants respectfully submit that capturing an image of a body feature does not, by itself, establish a subject record. In fact, Hawkins does not even disclose a record, not to mention a subject record. Thus, Hawkins fails to disclose the "establishing . . ." feature of claim 31.

With respect to the "associating . . ." feature, the Examiner, in the Final Office Action at page 6, asserts that capturing a further image of the body feature discloses "associating . . . at least one second image with [a] subject record" in addition to "capturing, through [a] beauty facility, at least a second image of the external condition of [a] subject, the second image being captured after the first image is captured," as recited in claim 31. Appellants respectfully submit that capturing a further image of the body feature does not, by itself, associate at least one second image with a subject record. The Examiner further asserts, in the Final Office Action at page 6, that digitally transforming a captured images to demonstrate effects of use of the cosmetic product also discloses the "associating . . ." feature. Digitally transforming a captured image does not associate the image with a subject record especially in light of the fact that the reference does not disclose a subject record. Thus, Hawkins fails to disclose "associating . . ." feature of claim 31.

With respect to the "providing . . ." feature, the Examiner, in the Final Office Action at page 6, asserts that displaying captured and transformed image to a user discloses "providing [a] subject with viewing access to [a] subject record." Again,

Hawkins fails to even mention a subject record, and thus cannot teach “providing [a] subject with viewing access to [a] subject record,” as recited in claim 31.

For at least these reasons, the § 102 rejection of claim 31 based on Hawkins should be reversed.

2. Hawkins fails to disclose each and every element recited in claims 32-38 and 57

Hawkins fails to teach at least “distributing at least one cosmetic product to the beauty facility,” “instructing the beauty facility to capture images of the external body condition before and after application of the at least one cosmetic product,” and “instructing the beauty facility to display to the customer the before and after images so that the customer may be provided with a visual indication of progress,” as recited in independent claim 32 and required by its dependent claims 33-38 and 57. In the Final Office Action at page 6, the Examiner alleges that “[s]electing the cosmetic product at the sales counter . . . inherently indicates *distributing* said cosmetic product to the point of sale [and] . . . stipulates that without instructing said operator how to conduct said method prior to said ‘assisting’ the subject, said operator would not be able to conduct said method.” However, the Examiner has not established that Hawkins discloses the above noted features of claims 32-38 and 57. Further, the Examiner has not established inherency.

As M.P.E.P. § 2112 makes clear:

To establish inherency, the extrinsic evidence “must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities

or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." (internal citations omitted).

In addition, M.P.E.P. § 2112 states:

In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. (internal citations omitted).

In this case, the Final Office Action fails to provide sufficient evidence from Hawkins, or any extrinsic evidence, that makes clear that the subject matter of claims 32-38 and 57 is necessarily present in the reference. Further, the Final Office Action fails to present sufficient factual basis and technical reasoning to demonstrate inherency. That Hawkins allegedly mentions "[s]electing the cosmetic product at the sales counter" does not demonstrate that the recitation of "distributing at least one cosmetic product to the beauty facility" is necessarily present in Hawkins. For example, "[s]electing the cosmetic product at the sales counter" may be done without "distributing at least one cosmetic product to the beauty facility."

In addition, the Final Office Action provides no factual basis and technical reasoning to support the allegation that use of Hawkins's method indicates instructing a business entity to perform the claimed method. Consequently, the Examiner cannot properly infer that the subject matter of claims 32-38 and 57 is inherently disclosed by Hawkins.

For at least these reasons, the § 102 rejection of claims 32-38 and 57 based on Hawkins should be reversed.

3. *Hawkins fails to disclose each and every element recited in claims 49, 60, and 61*

Hawkins fails to teach at least “analyzing the first and second information to determine an extent of differences that occurred in the body condition between the first and second time frames” and “prescribing at least one beauty product based on the extent of determined differences,” as recited in independent claim 49 and required in its dependent claims 60 and 61. Although Hawkins at paragraph [0042] mentions allowing a consumer to compare results between images, this is not the same as and does not constitute “analyzing first and second information to determine an extent of differences that occurred in the body condition,” as recited in independent claim 49.

Further, digitally transforming an image to demonstrate predicted effects of a cosmetic product treatment, as disclosed by Hawkins at paragraphs [0043] and [0044], does not anticipate “analyzing . . . first and second information to determine an extent of differences that occurred in the body condition,” as claimed. Specifically, in Hawkins’s system, an image is digitally transformed to demonstrate a predicted effect, not to analyze information to determine an extent of differences that occurred in the body condition. Additionally, giving customized product information to a consumer to help achieve the ideal in a digitally transformed image that demonstrates predicted effects of a cosmetic product treatment, as disclosed by Hawkins at paragraph [053], is not the same as and does not constitute prescribing at least one beauty product based on the extent of determined differences that occurred in the body condition between the first and second time frames, as claimed.

For at least these reasons, the § 102 rejection of claims 49, 60, and 61 based on Hawkins should be reversed.

E. The Rejection of Claim 1-24, 27-30, 48, and 50-56 Under 35 U.S.C. § 103(a) Based on Hawkins in view of Marapane Should Be Reversed

The rejection of claims 1-24, 27-30, 48, and 50-56 under 35 U.S.C. § 103(a) should be reversed because a case for *prima facie* obviousness has not been established. To establish *prima facie* obviousness under 35 U.S.C. § 103(a), the Examiner must show first that the prior art references teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Second, the Examiner must show that there is some suggestion or motivation, either in the references or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the references in a manner resulting in the claimed invention. *In re Rouffet*, 149 F.3d 1350, 47 USPQ2d 1453 (Fed. Cir. 1998). Third, the Examiner must show that there is a reasonable expectation of success to modify or combine. *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988). Moreover, “[b]oth the suggestion and the reasonable expectation of success must be found in the prior art reference, not in the Applicant’s disclosure.” *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991).

In this case, *prima facie* obviousness has not been established with respect to claims 1-24, 27-30, 48, and 50-56 at least because (1) Hawkins and Marapane, taken alone or in combination, fail to teach or suggest all of the features recited in claims 1-24,

27-30, 48, and 50-56; and (2) the Examiner failed to provide a proper motivation to combine Hawkins and Marapane in a manner resulting in Appellants' claimed invention.

1. Hawkins and Marapane do not support the § 103(a) rejection of claims 1-4 and 53

- i) Hawkins and Marapane fail to teach or suggest every element recited in claims 1-4 and 53

Hawkins and Marapane fail to teach or suggest at least "enabling [a] subject to view . . . first information, . . . second information, and at least part of . . . stored information," as recited in independent claim 1 and required in its dependent claims 2-4 and 53. Hawkins merely discloses juxtaposing original and transformed images on a screen. Hawkins, Abstract. Marapane merely discloses a screen that asks a recipient how often he/she has colored his/her hair over the past year and states that the frequency to which someone colors his/her hair may affect the hair's condition and ability to receive another coloring. Marapane, page 4, lines 16-18. Neither of these disclosures in Hawkins and Marapane teaches or suggests, separately or in combination, "enabling [a] subject to view . . . first information, . . . second information, and at least part of the stored information" (emphasis added).

- ii) The requisite motivation for combining Hawkins and Marapane to yield the invention in claims 1-4 and 53 is lacking

Further, there is no motivation to combine Hawkins and Marapane to yield the invention in claims 1-4 and 53. In the Final Office Action at page 8, the Examiner alleges that it would have been obvious to modify Hawkins because it is allegedly advantageous to allow estimation of a subject's body condition and ability to receive

another coloring. However, this alleged motivation would not have caused any hypothetical combination of Hawkins and Marapane to yield the inventions in claims 1-4 and 53. Specifically, even if it were advantageous to allow estimation of a subject's body condition and ability to receive another coloring (which has not been demonstrated), that alleged motivation would only yield a hypothetical system for juxtaposing original and transformed images on a screen as disclosed in Hawkins, and asking a recipient how often he/she has colored his/her hair over the past year as disclosed in Marapane. That alleged motivation does not demonstrate why one would combine Hawkins and Marapane to (1) obtain first information representative of an external body condition of a subject, (2) obtain second information representative of the external body condition of the subject after the subject uses a beauty product, (3) facilitate storage of information reflecting the subject's usage of the beauty product, and (4) enable the subject to view the first information, the second information, and at least part of the stored information, as required by claims 1-4 and 53.

In view of the above, it appears that the Examiner is using hindsight reasoning to reconstruct the inventions in claims 1-4 and 53 from the prior art. This is improper. The Federal Circuit has specifically admonished the use of "the inventor's disclosure as a blueprint" in hindsight. *In re Dembicza*k, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999), abrogated on other grounds by *In re Gantside*, 203 F.3d 1305, 53 USPQ2d 1769 (Fed. Cir. 2000). The court has further warned that an "inventor's explanation of how the invention works does not render obvious that which is otherwise unobvious." *In re Glaug*, 283 F.3d 1335, 1342, 62 USPQ2d 1151, 1155 (Fed. Cir. 2002). These admonitions and warnings are "especially important in the case of less

technically complex inventions, where the very ease with which the invention can be understood may prompt one to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.” *Dembiczak*, 175 F.3d at 999, 50 USPQ2d at 1617 (quotation omitted).

For at least these reasons, the § 103(a) rejection of claims 1-4 and 53 based on Hawkins and Marapane should be reversed

2. Hawkins and Marapane do not support the § 103(a) rejection of claims 5-24, 27-30, and 54-56

Hawkins and Marapane fail to teach or suggest at least “enabling [a] subject to view . . . first image, . . . second image, and . . . stored information on a display device, to thereby visually observe changes that occurred between times when the first and second images were captured,” as recited in independent claim 5 and required by its dependent claims 6-24, 27-30, and 54-56. While claims 5-24, 27-30, and 54-56 are of different scope than claims 1-4 and 53, Hawkins and Marapane do not teach or suggest the “enabling [a] subject to view . . .” feature of claims 5-24, 27-30, and 54-56 for at least reasons similar to those presented above for claims 1-4 and 53. Further, there is no motivation to combine Hawkins and Marapane to yield the inventions in claims 5-24, 27-30, and 54-56 for at least reasons similar to those presented above for claims 1-4 and 53.

For at least these reasons, the § 103(a) rejection of claims 5-24, 27-30, and 54-56 based on Hawkins and Marapane should be reversed.

3. Hawkins and Marapane do not support the § 103(a) rejection of claim 48

Hawkins and Marapane fail to teach or suggest at least “enabling [a] subject to view . . . first image, . . . second image, and . . . stored information on a display device, to thereby visually observe changes that occurred between times when the first and second images were captured,” as recited in claim 48. While claim 48 is of different scope than claims 1-4 and 53, Hawkins and Marapane do not teach or suggest the “enabling [a] subject to view . . .” feature of claim 48 for at least reasons similar to those presented above for claims 1-4 and 53. Further, there is no motivation to combine Hawkins and Marapane to yield the invention in claim 48 for at least reasons similar to those presented above for claims 1-4 and 53.

For at least these reasons, the § 103(a) rejection of claim 48 based on Hawkins and Marapane should be reversed.

4. Hawkins and Marapane do not support the § 103(a) rejection of claims 50-52

Hawkins and Marapane fail to teach or suggest at least “providing instructions for storage of third information relating to behavior of a subject between . . . first and second time frames,” and “establishing a subject record, the record including . . . first, second and third information, wherein [a] subject is enabled to maintain control of the subject record,” as recited in independent claim 50 and required in its dependent claims 51 and 52. In the Final Office Action at page 10, the Examiner admits that Hawkins does not disclose the “providing instructions for storage of third information . . .” and “establishing a subject record . . .” features, and attempts to correct Hawkins’s

deficiencies with Marapane. Specifically, the Examiner alleges that page 8, lines 8-10 of Marapane teach the "providing instructions for storage of third information . . ." and "establishing a subject record . . ." features. However, page 8, lines 8-10 of Marapane merely states:

After these initial readings were taken, the consumer's hair was colored using a shade selected by the consumer. After coloring and drying, the color of the hair was taken again using the colorimeter as outlined above.

This is not the same as and does not suggest providing instructions for storage of third information relating to behavior of a subject between first and second time frames, and establishing a subject record, the record including the first, second and third information, wherein the subject is enabled to maintain control of the subject record. Further, there is no motivation to combine Hawkins and Marapane to yield the invention in claims 50-52 for at least reasons similar to those presented above for claims 1-4 and 53.

For at least these reasons, the § 103(a) rejection of claims 50-52 based on Hawkins and Marapane should be reversed.

F. The Rejection of Claims 45-47 Under 35 U.S.C. § 103(a) Based on Maloney in view of Marapane Should Be Reversed

In this case, *prima facie* obviousness has not been established with respect to claims 45-47 at least because (1) Maloney and Marapane, taken alone or in combination, fail to teach or suggest all of the features recited in claims 45-47; and (2) the Examiner failed to provide a proper motivation to combine Maloney and Marapane in a manner resulting in Appellants' claimed invention.

1. *Maloney and Marapane do not support the § 103(a) rejection of claim 45*

- i) Maloney and Marapane fail to teach or suggest every element recited in claim 45

Maloney and Marapane fail to teach or suggest at least “enabling the data structure to maintain a historical record of at least some of the recorded cosmetic product usage information and personal information,” and “causing at least one product to be recommended to the individual, wherein the at least one product recommendation is generated using at least a portion of the historical record,” as recited in independent claim 45.

Maloney merely discloses providing a customized product to a consumer. Maloney, Fig. 1, page 6. The customized product is selected from a list of products provided to the consumer based on a profiling category of the consumer, which is determined by collecting consumer profiling data. *Id.*, at page 7. Marapane merely discloses a screen that asks a recipient how often he/she has colored his/her hair over the past year and states that the frequency to which someone colors his/her hair may affect the hair’s condition and ability to receive another coloring. Marapane, page 4, lines 16-18. Neither of these disclosures in Maloney and Marapane teaches or suggests, separately or in combination, “enabling the data structure to maintain a historical record of at least some of the recorded cosmetic product usage information and personal information,” and “causing at least one product to be recommended to the individual, wherein the at least one product recommendation is generated using at least a portion of the historical record” (emphasis added).

In the Final Office Action at page 12, the Examiner appears to allege that page 12, lines 15-16 of Maloney purportedly teaches "causing at least one product to be recommended to the individual, wherein the at least one product recommendation is generated using at least a portion of the historical record." However, page 12, lines 15 and 16 of Maloney merely discloses that "[p]referably, every interaction is followed by feedback data which is then utilized to learn the consumer's preferences and optimize the consumer's experience." Appellants note that this is not the same as and does not suggest "causing at least one product to be recommended to the individual, wherein the at least one product recommendation is generated using at least a portion of the historical record," as recited in independent claim 45.

In the Final Office Action at page 13, the Examiner appears to admit that Maloney does not teach "enabling the data structure to maintain a historical record of at least some of the recorded cosmetic product usage information and personal information," and then attempts to rely on Marapane for this "enabling the data structure . . ." feature. However, as mentioned above, Marapane merely discloses a screen that asks a recipient how often he/she has colored his/her hair over the past year and states that the frequency to which someone colors his/her hair may affect the hair's condition and ability to receive another coloring. Marapane, page 4, lines 16-18. This is not the same as and does not suggest "enabling the data structure to maintain a historical record of at least some of the recorded cosmetic product usage information and personal information," as recited in independent claim 45.

ii) The requisite motivation for combining Maloney and Marapane to yield the invention in claim 45 is lacking

Further, there is no motivation to combine Maloney and Marapane to yield the invention in claim 45. In the Final Office Action at page 13, the Examiner alleges that it would have allegedly been obvious to modify Maloney because it is allegedly advantageous to allow estimation of a subject's body condition and ability to receive another coloring. However, this alleged motivation would not have caused any hypothetical combination of Maloney and Marapane to yield the inventions in claim 45.

Specifically, even if it were advantageous to allow estimation of a subject's body condition and ability to receive another coloring (which has not been demonstrated), that alleged motivation would only yield a hypothetical method for providing a customized product to a consumer as disclosed in Maloney, and asking a recipient how often he/she has colored his/her hair over the past year as disclosed in Marapane. That alleged motivation does not demonstrate why one would combine Maloney and Marapane to (1) enable an individual to record in a data structure information about the individual's cosmetic product usage, (2) enable the individual to record in the data structure personal information, other than the cosmetic product usage information, the personal information including at least one of lifestyle information, information about physical characteristics of the individual, fashion preferences, area of residence, vacation patterns, and climate and weather conditions at areas of vacation and residence, (3) enable the individual to record in the data structure personal information, other than the cosmetic product usage information, the personal information including at least one of lifestyle information, information about physical characteristics of the

individual, fashion preferences, area of residence, vacation patterns, and climate and weather conditions at areas of vacation and residence, (4) enable the data structure to maintain a historical record of at least some of the recorded cosmetic product usage information and personal information, and (5) cause at least one product to be recommended to the individual, wherein the at least one product recommendation is generated using at least a portion of the historical record, as required by claim 45.

In view of the above, it appears that the Examiner is using hindsight reasoning to reconstruct the invention recited in claim 45 from the prior art. This is improper. The Federal Circuit has specifically admonished the use of “the inventor’s disclosure as a blueprint” in hindsight. *In re Dembicza*k, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999), abrogated on other grounds by *In re Gartside*, 203 F.3d 1305, 53 USPQ2d 1769 (Fed. Cir. 2000). The court has further warned that an “inventor’s explanation of how the invention works does not render obvious that which is otherwise unobvious.” *In re Glaug*, 283 F.3d 1335, 1342, 62 USPQ2d 1151, 1155 (Fed. Cir. 2002). As mentioned above, these admonitions and warnings are “especially important in the case of less technically complex inventions, where the very ease with which the invention can be understood may prompt one to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.” *Dembicza*k, 175 F.3d at 999, 50 USPQ2d at 1617 (quotation omitted).

For at least these reasons, the § 103(a) rejection of claim 45 based on Maloney and Marapane should be reversed.

2. *Maloney and Marapane do not support the § 103(a) rejection of claims 46 and 47*

Maloney and Marapane fail to teach or suggest at least “causing, when . . . subject’s cosmetic usage is inconsistent with . . . cosmetic usage of individual’s with lifestyles similar to the subject’s lifestyle, at least one product to be recommended to the subject,” as recited in independent claim 46 and required by its dependent claim 47.

Maloney merely mentions determining a profiling category for a consumer based on profiling information and providing a list of products corresponding to the category. Maloney, pages 7 and 9. In the Final Office Action at page 13, the Examiner appears to indicate that page 7, lines 13 and 14 of Maloney allegedly discloses the “causing, when the subject’s cosmetic usage is inconsistent . . . ” feature. However, page 7, lines 13 and 14 of Maloney merely discloses that “(t)he consumer is provided a list of one or more products (40) that correspond to the consumer profile category.” This is not the same as and does not suggest “causing, when the subject’s cosmetic usage is inconsistent with the cosmetic usage of individual’s with lifestyles similar to the subject’s lifestyle, at least one product to be recommended to the subject” (emphasis added).

Marapane, separately or in combination, does not cure the deficiencies of Maloney. Marapane merely discloses asking a recipient how often he/she has colored his/her hair over the past year and stating that the frequency to which someone colors his/her hair may affect the hair’s condition and ability to receive another coloring. Marapane, page 4, lines 16-18.

Furthermore, there is no motivation to combine Maloney and Marapane to yield the invention in claims 46 and 47 for at least reasons similar to those presented above for claim 45.

For at least these reasons, the § 103(a) rejection of claims 46 and 47 based on Maloney and Marapane should be reversed.

G. The Rejection of Claim 25 Under 35 U.S.C. § 103(a) Based on Hawkins in view of Marapane and further in view of Redbook Image Should Be Reversed

In this case, *prima facie* obviousness has not been established with respect to claim 25 at least because (1) Hawkins, Marapane, and Redbook Image, taken alone or in combination, fail to teach or suggest all of the features recited in claim 25; and (2) the Examiner failed to provide a proper motivation to combine Hawkins, Marapane, and Redbook Image in a manner resulting in Appellants' claimed invention.

1. Hawkins, Marapane, and Redbook Image do not support the § 103(a) rejection of claim 25

- i) Hawkins, Marapane, and Redbook fail to teach or suggest every element recited in claim 25

Claim 25 depends from independent claim 5 and includes all limitations of claim 5. As discussed above for claim 5, Hawkins and Marapane fail to teach or suggest, separately or in combination, at least "enabling the subject to view the first image, the second image, and the stored information on a display device, to thereby visually observe changes that occurred between times when the first and second images were captured," as recited in claim 5 and required by its dependent claim 25. Redbook Image fails to cure these deficiencies of Hawkins and Marapane. Redbook

Image is merely a photocopy image of the front of a CD, and does not teach “enabling the subject to view the first image, the second image, and the stored information on a display device, to thereby visually observe changes that occurred between times when the first and second images were captured.”

- ii) The requisite motivation for combining Hawkins, Marapane, and Redbook Image to yield the invention in claim 25 is lacking

Additionally, the requisite motivation for modifying Hawkins in view of Marapane and further in view of Redbook Image is lacking. According to the Federal Circuit, “virtually all [inventions] are combinations of old elements.” See e.g., *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998) (citations omitted). An examiner may find every element of a claimed invention in the prior art but mere identification is not sufficient to negate patentability. *Id.* The court explained that “the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed.” *Id.*

Furthermore, determinations of obviousness must be supported by evidence on the record. See *In re Zurko*, 258 F.3d 1379, 1386 (Fed. Cir. 2001), 59 USPQ2d 1693, 1696-98 (finding that the factual determinations central to the issue of patentability, including conclusions of obviousness by the Board, must be supported by “substantial evidence”). The desire to combine or modify references must be proved with “substantial evidence” that is a result of a “thorough and searching” factual inquiry. See

In re Lee, 277 F.3d 1338, 1343-1344 (Fed. Cir. 2002), 61 USPQ2d 1430, 1433 (quoting *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339,k 1351-52). Additionally, the Federal Circuit has clearly stated that the evidence of a motivation or suggestion to modify a reference must be “clear and particular.” *In re Dembicziak*, 175 F.3d 994, 999, 50 USP12d 1614, 1617 (Fed. Cir. 1999).

In this case, the Examiner has not shown by clear and particular evidence that a skilled artisan considering Hawkins, Marapane, and Redbook Image, and not having the benefit of Appellants’ disclosure, would have modified or combined the references in a manner resulting in the invention defined by claim 25. In the Final Office at page 14, the Examiner alleged that “[i]t would have been obvious . . . because it would advantageously promote distributor’s products.”

This allegation in the Office Action is not supported and does not show that a skilled artisan would have modified Hawkins as alleged because they fail to provide clear and particular evidence of motivation to combine. The Examiner’s alleged motivation to combine, which is to advantageously promote distributor’s products, is too broad and vague, and not explicit in the references. This form of alleged motivation, if successfully used against non-obviousness, would make the requirement of showing clear and particular evidence of motivation almost nonexistent because any combination can be said to promote products. Moreover, when the motivation to combine is not explicit in the references, “a court or examiner may find a motivation to combine prior art references in the nature of the problem to be solved.” *Ruiz v. A.B. Chance, Co.*, 357 F.3d 1270, 1276 (Fed. Cir. 2004). Because the problem to be solved is technical in

nature, the motivation to combine prior art references must also be technical, and not to achieve a commercial success, as alleged by the Examiner.

Appellants respectfully submit that the Examiner is impermissibly using teachings of the present application in hindsight to piece together isolated disclosures of the cited references. Examiners may not pick and choose among isolated disclosures in references to defeat patentability of a claimed invention. Such picking and choosing amounts to improper hindsight reconstruction, and is prohibited. *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988).

For at least these reasons, Appellants respectfully request the Board to reverse the § 103(a) rejection of claim 25 based on Hawkins, Marapane, and Redwood Image.

H. The Rejection of Claims 39-44, 58, and 59 Under 35 U.S.C. § 103(a) Based on Maloney Should Be Reversed

In this case, *prima facie* obviousness has not been established with respect to claims 39-44, 58, and 59 at least because (1) Maloney fails to teach or suggest all of the features recited in claims 39-44, 58, and 59; and (2) the Examiner failed to provide a proper motivation to modify Maloney in a manner resulting in Appellants' claimed invention.

1. Maloney does not support the § 103(a) rejection of claims 39-43 and 58

In the Final Office Action at page 15, the Examiner concedes that Maloney fails to disclose "a transportable computer-readable media." In rejecting claim 39 and its dependent claims 40-43 and 58, the Examiner, in the Final Office Action at page 15, alleges that "[i]t is old and well known that computer-readable media can be . . .

transportable." The Examiner further alleges that a skilled artisan would have modified Maloney to allow a subject to record personal beauty information on a transportable medium "because it would advantageously allow . . . use [of] this method in geographical locations where network communication is not available." The Examiner has not established the requisite motivation to modify Maloney, as discussed below.

The Office Action does not show that a skilled artisan considering Maloney, and not having the benefit of Appellants' disclosure, would have been motivated to modify Maloney's system in a manner resulting in Appellants' claimed combination. The allegations by the Examiner regarding motivation are completely conclusory and unsupported by any evidence on the record. For example, the Examiner points to no mention in Maloney of the alleged use "in geographical locations where network communication is not available." Further, the Examiner provides no evidence or reasoning showing that transportable medium would allow use of Maloney's method "in geographical locations where network communication is not available."

Even if transportable computer-readable media were old and well known, as alleged by the Examiner, *prima facie* obviousness has not been established. Section 2141.02 of the M.P.E.P. makes clear that "[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious" (internal citations omitted). Assuming *arguendo* that transportable computer-readable media were obvious or well known, the Examiner failed to establish that claim 39 as a whole, including "enabling a subject to record personal beauty information on a transportable medium" and "enabling a plurality of

beauty facilities to read the information on the transportable medium, and to update the information when the subject visits one or more of the plurality of beauty facilities," would have been obvious. Appellants submit that the Examiner is improperly using Appellants' claims in hindsight to reconstruct the prior art.

For at least these reasons, the § 103(a) rejection of claims 39-43 and 58 based on Maloney should be reversed.

2. Maloney does not support the § 103(a) rejection of claims 44 and 59

In this case, *prima facie* obviousness has not been established with respect to claims 44 and 59 for at least reasons similar to those set forth above for claims 39-43 and 58. For at least these reasons, the § 103(a) rejection of claims 44 and 59 based on Maloney should be reversed.

VIII. Conclusion

For the reasons given above, claims 1-25 and 27-61 are patentable over the cited references. The Board is therefore respectfully requested to reverse the outstanding rejections under 35 U.S.C. § 103(a), so that those pending claims may be allowed.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are any fees due which are not enclosed herewith, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 20, 2007

By:



Anthony M. Gutowski
Reg. No. 38,742

Finnegan, Henderson, Farabow,
Garrett & Dunner, L.L.P.
Customer No. 22,852

VIII. Claims Appendix

1. A method, comprising:
 - obtaining first information representative of an external body condition of a subject;
 - obtaining second information representative of the external body condition of the subject after the subject uses a beauty product;
 - facilitating storage of information reflecting the subject's usage of the beauty product; and
 - enabling the subject to view the first information, the second information, and at least part of the stored information.
2. The method of claim 1, wherein at least one of the first information and the second information is an image of the external body condition.
3. The method of claim 1, wherein each of the first information and the second information includes an image of the external body condition.
4. The method of claim 1, conducted in a network environment, wherein obtaining the first information and obtaining the second information occurs over a network and at a location remote from the subject.

5. A method, comprising:

providing information about beauty products;

facilitating electronic capture of a first image of an external body condition of a subject;

encouraging the subject to use at least one of the beauty products;

facilitating, after the subject has used the at least one beauty product, electronic capture of a second image of the external body condition of the subject, wherein capture of at least one of the first and second images occurs at a beauty facility;

facilitating capture and storage of information reflecting usage of at least one of the beauty products by the subject, the usage occurring on at least one occasion between capture of the first image and capture of the second image; and

enabling the subject to view the first image, the second image, and the stored information on a display device, to thereby visually observe changes that occurred between times when the first and second images were captured.

6. The method of claim 5, wherein providing information about beauty products includes at least one of offering beauty products for sale directly to consumers, offering beauty products for sale to consumers via a retail sales establishment, and offering beauty products through beauty facilities.

7. The method of claim 5, wherein the beauty facility is at least one of a hair salon, a spa, or another establishment providing beauty services.

8. The method of claim 5, wherein the beauty products include at least one of moisturizer, anti-aging product, anti-wrinkle product, hair coloring, elasticity enhancing product, and cosmetic products.

9. The method of claim 5, wherein the at least one beauty products includes at least one service including hair styling, hair cutting, hair coloring, hair removal, skin treatment and make-up application.

10. The method of claim 5, wherein enabling electronic capture of at least one of the first and second first images includes providing the beauty facility with least one of software, an image capture device and directions for capturing images.

11. The method of claim 5, wherein enabling electronic capture of at least one of the first and second first images includes providing access, via a network, to image capture and management software.

12. The method of claim 5, wherein the external body condition is a skin condition of the subject's face.

13. The method of claim 5, wherein encouraging the subject to use at least one of the beauty products includes providing to the beauty facility directions for prescribing at least one of the beauty products.

14. The method of claim 13, wherein the directions are contained within software and wherein the software is configured to cause a prescription to be displayed to the subject on the display in the beauty facility.

15. The method of claim 5, further comprising enabling simultaneous display to the subject of the first and second images, and enabling the subject to identify differences between the first and second images.

16. The method of claim 5, wherein encouraging the subject to use at least one of the beauty products includes prescribing at least one beauty product to the subject as a function of detected differences between the first and second images.

17. The method of claim 12, wherein the differences are electronically ascertained using an image processing comparison between the first and second images.

18. The method of claim 12, wherein the subject is encouraged to auto-evaluate the first and second images to thereby detect differences.

19. The method of claim 5, wherein enabling electronic image capture includes providing a driver for an electronic image capture device.

20. The method of claim 15, wherein the electronic image capture device is at least one of a digital still camera, a digital video camera, a scanner, and a web cam.

21. The method of claim 5, implemented through cooperation between a beauty product distributor and at least one beauty facility, wherein the distributor encourages consumers to visit the at least one beauty facility, and enables the beauty facility to access software for capturing and recording at the beauty facility at least one of the first and second images.

22. The method of claim 5, implemented through cooperation between a beauty product distributor and at least one beauty facility, wherein the distributor enables the beauty facility to access software for capturing and recording at the beauty facility at least one of the first and second images, and wherein the distributor provides to the beauty facility at least one of the beauty products.

23. The method of claims 21 or 22, wherein the distributor is at least one of a manufacturer, reseller, and wholesaler of at least one of the beauty products.

24. The method of claim 23, wherein the distributor also provides to the beauty facility recordable media, chosen from at least one of magnetic storage media, optical disc media, flash memory devices, or other tangible media upon which computer readable information may be recorded, the recordable media for use in storing the first and second images and the information about use.

25. The method of claim 24, wherein the recordable media includes a visible marking identifying at least the distributor.

26. (Canceled).

27. The method of claim 5, further comprising enabling the subject to view the first and second images at locations remote from the beauty facility.

28. The method of claim 5, further comprising enabling the beauty facility to store the first image on recordable media, and encouraging the beauty facility to recommend to the subject that the subject capture and store the second image on the recordable media at a location remote from the beauty facility.

29. The method of claim 5, further comprising enabling the beauty facility to store the first image on recordable media, and encouraging the beauty facility to recommend to the subject that the subject return to the beauty facility for capture and storage of the second image on the recordable media.

30. The method of claim 5, conducted in a network environment, wherein at least some processing functions occur at a location remote from the beauty facility.

31. A method of recording beauty information, the method comprising:

capturing, through a beauty facility, at least a first image of an external condition of a subject;

establishing a subject record, the record including the first image;

prescribing a cosmetic product to the subject for treating the external condition;

capturing, through the beauty facility, at least a second image of the external condition of the subject, the second image being captured after the first image is captured;

associating the at least one second image with the subject record; and

providing the subject with viewing access to the subject record.

32. A method comprising:

providing a beauty facility with technology for capturing external body condition images of a customer;

distributing at least one cosmetic product to the beauty facility;

instructing the beauty facility to capture images of the external body condition before and after application of the at least one cosmetic product;

instructing the beauty facility to display to the customer the before and after images so that the customer may be provided with a visual indication of progress.

33. The method of claim 32, wherein instructing the beauty facility to capture images includes instructing the beauty facility on how to record images on a transportable medium.

34. The method of claim 32 or 33, further comprising providing the customer with software that enables the customer to view the images at a location remote from the beauty facility.

35. The method of claim 34, wherein providing the customer with software, includes providing the customer with access to a web site through which the images are viewable.

36. The method of claim 34, wherein providing the customer with software includes distributing the software to the customer through the beauty facility.

37. The method of claim 32, further comprising enabling the customer to capture images to the transportable medium at a location remote from the beauty facility.

38. The method of claim 37, further comprising enabling the customer to associate with each image a record of a beauty product used before each image is recorded.

39. A method, comprising:

enabling a subject to record personal beauty information on a transportable medium;

enabling a plurality of beauty facilities to read the information on the transportable medium, and to update the information when the subject visits one or more of the plurality of beauty facilities; and

enabling the personal information to be updated by the subject at a location remote from a beauty facility.

40. The method of claim 39, wherein the remote update is enabled, at least in part, by information exchanges initiated by the subject over an electronic network.

41. The method of claim 39, wherein the personal beauty information includes images of portions of the subjects' body.

42. The method of claim 39, wherein the transportable medium includes at least one of magnetic storage medium, optical disc, flash memory devices, or other tangible media upon which information may be recorded.

43. The method of claim 39, wherein the personal information stored on the transportable medium include time lapse images of portions of the subject's body, and wherein the subject is enabled to auto-evaluate visible changes over time, and to record the auto-evaluated visible changes on the transportable media.

44. A method, comprising:

enabling a beauty facility to record on transportable medium personal beauty information about a subject;

enabling the subject to access, at a location remote from the beauty facility, the personal beauty information;

enabling the subject to update, at a location remote from the beauty facility, the personal beauty information; and

enabling the subject to compare, at a location remote from the beauty facility, the accessed personal beauty information and the updated personal beauty information.

45. A method, comprising:

enabling an individual to record in a data structure information about the individual's cosmetic product usage;

enabling the individual to record in the data structure personal information, other than the cosmetic product usage information, the personal information including at least one of lifestyle information, information about physical characteristics of the individual, fashion preferences, area of residence, vacation patterns, and climate and weather conditions at areas of vacation and residence;

enabling an individual to update in the data structure cosmetic product usage information and personal information;

enabling the data structure to maintain a historical record of at least some of the recorded cosmetic product usage information and personal information; and

causing at least one product to be recommended to the individual, wherein the at least one product recommendation is generated using at least a portion of the historical record.

46. A beauty advisory method, comprising:

enabling a subject to record in a data structure information about the subject's cosmetic product usage and about the subject's lifestyle;

comparing the recorded information with a database of information on cosmetic usage and lifestyles of a plurality of individuals;

determining whether the subject's cosmetic usage is consistent with the cosmetic usage and lifestyles of a trend of use by at least some of the plurality of individuals; and

causing, when the subject's cosmetic usage is inconsistent with the cosmetic usage of individual's with lifestyles similar to the subject's lifestyle, at least one product to be recommended to the subject.

47. The method of claim 46, further comprising enabling the subject to record personal information about the subject's physical characteristics, and wherein the caused at least one product recommendation is a function of the subject's lifestyle and physical information.

48. A method, comprising:
- offering for sale beauty products;
- facilitating electronic capture of a first image of an external body condition of a subject;
- encouraging the subject to use at least one of the beauty products;
- facilitating, after the subject has used the at least one cosmetic product, electronic capture of a second image of the external body condition of the subject, wherein capture of at least one of the first and second images occurs at a beauty facility;
- facilitating capture and storage of information reflecting usage of at least one of the cosmetic products by the subject, the usage occurring on at least one occasion between capture of the first image and capture of the second image; and
- enabling the subject to view the first image, the second image, and the stored information on a display device, to thereby visually observe changes that occurred between times when the first and second images were captured.

49. A method comprising:
- providing information about beauty products;
- providing instructions for storage of first information relating to an external body condition of a subject in a first time frame;
- providing instructions for storage of second information relating to an external body condition of a subject in a second time frame;

analyzing the first and second information to determine an extent of differences that occurred in the body condition between the first and second time frames; and prescribing at least one beauty product based on the extent of determined differences.

50. A method of recording beauty information, the method comprising:
providing information about beauty care;
providing instructions for storage of first information relating to an external body condition of a subject in a first time frame;
providing instructions for storage of second information relating to an external body condition of a subject in a second time frame;
providing instructions for storage of third information relating to behavior of a subject between the first and second time frames; and
establishing a subject record, the record including the first, second and third information, wherein the subject is enabled to maintain control of the subject record.

51. The method of claim 50, wherein the subject is enabled to maintain control through the use of software that stores the record at a location with access controlled by the subject.

52. The method of claim 51, wherein the location is a portable information storage medium.

53. The method of claim 1, further comprising presenting to the subject at least one depiction of data quantifying an effectiveness of the beauty product based on the first information, the second information, and at least part of the stored information.

54. The method of claim 5, further comprising processing the first and second images of the external body condition of the subject to accentuate differences between the images.

55. The method of claim 5, further comprising:
processing the first and second images of the external body condition of the subject to detect differences between said images; and
providing advice to a subject based on the detected differences and based on personal information associated with the subject.

56. The method of claim 5, further comprising:
determining a probable cause of a difference between the first and second images of the external body condition using personal information associated with the subject; and
presenting to the subject the determined probable cause along with preventative measures.

57. The method of claim 32, wherein instructing the beauty facility to capture images of the external body condition before and after application of the at least one cosmetic product includes instructing the beauty facility to capture and store information reflecting a nature of the application of the at least one cosmetic product.

58. The method of claim 39, wherein enabling a subject to record personal beauty information on a transportable medium includes enabling a subject to record, on the transportable medium, personal beauty information relating to beauty habits of the subject.

59. The method of claim 44, wherein enabling a beauty facility to record on transportable medium personal beauty information about a subject includes enabling a beauty facility to record on transportable medium personal beauty information relating to beauty habits of the subject.

60. The method of claim 49, wherein prescribing at least one beauty product comprises prescribing at least one beauty product based on the extent of determined differences and personal information associated with the subject.

61. The method of claim 60, further comprising determining a probable cause of the differences using personal information associated with subject.

IX. Evidence Appendix

None

X. Related Proceedings Appendix

None